IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 613 of 2004

For Approval and Signature:

**HONOURABLE MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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**P S JOSHI - Petitioner(s)**

**Versus**

**STATE OF GUJARAT - Respondent(s)**

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Appearance
PETITIONER [IN-PERSON]
MR NAGESH SOOD AGP for Respondent

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**CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT**

**Date : 26/09/2005**

# *ORAL JUDGMENT*

*T*his petition was taken up for hearing on 22nd September, 2005. The petitioner had appeared in-person and had made his submissions. Though the matter was part-heard, the petitioner did not turn-up on the next date i.e. 23rd September, 2005. *Today also*, the petitioner is

not present. Learned AGP Mr. Sood has informed that the petitioner is a practising advocate and he has regular practice in this Court.

The petitioner is a former Government servant. By *impugned* Order dated 11th July, 2001 made by the State Government, the petitioner is ordered to be removed from service. Feeling aggrieved, the petitioner preferred a Review Application before the State Government which came to be dismissed on 28th November, 2003. Feeling aggrieved, the petitioner has preferred the present *writ* petition.

A disciplinary proceeding was initiated against the petitioner, a Research Officer in the Gujarat Statistical Service [Class-II], on 24th May, 1999. The petitioner was given a charge-sheet with respect to several acts of commission and omission amounting to misconduct. It was alleged that for the Block Years 1992-1995, twice, the petitioner travelled to his native place and recovered the amount of Leave Travel Concession. *Nevertheless*, he also claimed and received the benefit of encashment of Leave Travel Concession for the said Block Years 1992-1995. In response to the audit objection, the petitioner made interpolation in the official records and thus tampered with the records. He claimed Travelling

Allowance while he was on leave. He also claimed Travelling Allowance and Daily Allowance contrary to the rules. He was also charged for insubordination. The petitioner did not reply to the said charge-sheet. In the inquiry proceeding also, he avoided to file his defence statement. He gave defence statement dated 31st January, 2001 after completion of inquiry proceeding, after the inquiry officer submitted his report and after repeated reminders. The Inquiry Officer had opined that the imputation of charge made against the petitioner was proved. The opinion of the Inquiry Officer was accepted by the State Government. After giving opportunity to the petitioner to make representation against the inquiry report and after consulting the Gujarat Public Service Commission, the petitioner was ordered to be removed from service by the *impugned* Order dated 11th July, 2001.

Mr. Joshi has submitted that considering the complexity of charges levelled against the petitioner and that the Inquiry officer and the Presenting Officer were highly qualified officers of the State Government, the petitioner ought to have been allowed to avail of services of a legal practitioner. The contention requires to be rejected out right. *First*, the petitioner was alleged to have committed financial irregularity i.e. by

claiming encashment of Leave Travel Concession and by claiming Travelling Allowance and Daily Allowance contrary to the rules. The imputation of charge made against the petitioner, evidently, did not raise complex questions of facts or law. Besides, there is nothing on record to suggest that the petitioner did ask for permission to avail of the services of a legal practitioner, which he was denied. In support of this contention, Mr. Joshi has relied upon communication dated 21st October, 1999. Under the said communication, the petitioner had asked for certain clarifications. In the footnote, he also inquired whether he was entitled to engage an advocate. In my view, the said communication cannot be said to be an application seeking permission to avail of the services of a legal practitioner. In absence of such request made by the petitioner and in absence of complex questions of facts and law arising in the matter, the said contention cannot be countenanced. The petitioner has also challenged the validity of the inquiry report on the ground that the Inquiry Officer failed to consider and appreciate evidence of the witnesses. Reliance is placed on sub-rule 22 of Rule 9 of the **Gujarat Civil Services** [*Discipline & Appeal*] **Rules, 1971** {hereinafter referred to as, "**the Rules**"]. It is

also submitted that the Inquiry officer failed to question the petitioner on the circumstances appearing against him, as required by sub-Rule 17 of Rule 9 of the Rules. In support thereof, he has relied upon judgment of the *Hon'ble* Supreme Court in the matter of **Ministry of Finance & Anr. vs. S.B Ramesh** [AIR 1998 SC 853]. It is submitted that contrary to the said Rule 9, the State Government had appointed two Presenting Officers and both the Presenting Officers had submitted separate statements of case and the charges levelled against the petitioner were not specific, were vague and were not capable of answer.

As to the imputation of charges, I am unable to hold that the charges levelled against the petitioner were vague or were not specific. The charges were in fact with respect to the specific incidences. The memorandum of charge gives out specific dates, specific amount involved, specific voucher numbers and cheque numbers, etc. As to the Presenting Officer, it appears that the incidences under inquiry occurred at different times while the petitioner was serving in different offices. The statement of case was, therefore, required to be filed by two different officers for the alleged misconduct while in service in particular office. Two

presenting officers, therefore, were appointed to present case with respect to the charges in connection with the misconducts allegedly committed by the petitioner while in concerned office. The petitioner was given adequate opportunity to meet with all the charges; nor the petitioner was prejudiced on account of two presenting officers' submitting statement in connection with the misconduct alleged to have been committed in concerned office.

As to the report of the Inquiry Officer, it should be noted that the Inquiry Officer had considered each charge separately. It should be noted that the petitioner did not reply to the charges nor did he submit defence statement before the Inquiry Officer. It was only after repeated reminders were given by the State Government, a defence statement was submitted on 31st January, 2001 i.e. long after the inquiry officer submitted his report. Besides, the charges levelled against the petitioner were based on documentary evidence.

I am, therefore, of the view that the disciplinary proceeding was conducted against the petitioner in consonance with the statutory rules and principles of natural justice and fair play. The petitioner of his own

volition did not avail of the opportunity of defence. Considering the gravity of guilt proved against the petitioner, the punishment of removal from service was just and proper.

It further appears that pending this petition, the petitioner had taken out Civil Application No. 452 of 2005 for grant of compassionate pension to the petitioner. The said Application was disposed of on 28th February, 2005 [*Coram* : **H.K Rathod, J.**]. The State Government was directed to consider the petitioner's case for compassionate pension. Learned AGP Mr. Sood has informed that by Order dated 5th May, 2005, the said request has been rejected. On perusal of the Order dated 5th May, 2005, it appears that the State Government has refused compassionate pension to the petitioner on the grounds that the petitioner had committed financial irregularities; and that the petitioner has started legal practice in the High Court as an advocate; and that his wife has been gainfully employed as a teacher in the School.

In view of the above discussion, I see no substance in this petition. The petition is dismissed with cost. Rule is *discharged*.

{Miss R.M Doshit, J.}

*Prakash**